

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 03-0355**

**RESPONSIBLE OFFICER
SALES TAX and WITHHOLDING TAX
For Tax Period 1993-1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

Issue

Sales and Withholding Tax -Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-3-4-8 (f), IC 6-8.1-5-1 (b), *Ball v. Indiana Department of Revenue*, 525 N.E.2d 356, affirmed 563 N.E.2d 522 (1988).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

Statement of Facts

The taxpayer was the president of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 1993-1999. The Indiana Department of Revenue (department) assessed the outstanding corporate withholding and sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment. The assessments for June, 1999 were cancelled by the department prior to the hearing which was held on March 7, 2005. This Letter of Findings results.

Sales and Withholding Tax-Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b).

First the taxpayer argued that the amounts assessed were incorrect. The taxpayer provided the department with copies of several checks in support of this contention. The department traced these checks and determined that each had been properly applied to the taxpayer’s liabilities. The taxpayer was given full credit for the payments. The other documentation submitted by the taxpayer was not in a form that the department could trace. The taxpayer did not provide documentation sufficient to sustain his burden of proving that the assessments were calculated incorrectly.

The taxpayer also argued that it was unnecessarily duplicative and redundant for the department to assess the corporate taxes against him personally. The taxpayer contended that he had already taken personal responsibility for the taxes and was currently paying \$100.00 per month to satisfy the corporate liability. Therefore there was no need for the state to go through the administrative procedures of officially assessing the unpaid corporate taxes against him personally.

The taxpayer offered the case of *Ball v. Indiana Department of Revenue*, 525 N.E.2d 356, affirmed 563 N.E.2d 522 (1988) in support of his contention. In that case, the department issued a notice for payment of trust fund taxes to a corporation. Several years later the department assessed those same trust taxes personally against Mr. Ball. He argued that he was denied due process because the department failed to give him notice of the tax assessment at the same time that notice was originally sent to the corporation. The Court held that separate and additional notice to the responsible officer of a corporation liable for trust fund taxes is not required where there is timely notice to the corporation of the assessment. Therefore the corporate trust fund tax assessment against Mr. Ball did not violate the Statute of Limitations or Mr. Ball’s due process rights.

The taxpayer argues that there is no question that he knew of the trust tax assessment against the corporation. Further the taxpayer argues that he has assumed responsibility for the payment of the trust fund taxes as evidenced by his monthly payments on the outstanding liability. Therefore it was redundant and unduly duplicative for the department to bill him individually for the corporate trust taxes as a responsible officer.

The department agrees that it is not necessary for the department to bill the responsible officer separately for trust fund taxes. However, nothing precludes the department from doing so. In fact, the Court in the *Ball* case had the opportunity to say that the department could not

personally assess Mr. Ball. The Court did not do so. Rather it agreed that the personal assessment against Mr. Ball for the trust taxes was proper.

Although the department is not required to assess corporate trust fund taxes personally against responsible parties, the department may do so pursuant to IC 6-2.5-9-3 and IC 6-3-4-8 (f). In this case, the department chose to assess the corporate trust fund taxes personally against the taxpayer. The taxpayer failed to sustain his burden of proving that it was an inappropriate assessment.

Finding

The taxpayer's protest is denied.

KMA/JMM/JMS/05/26/05